

AMENDMENT NUMBER ONE
TO AN AGREEMENT
BETWEEN THE CITY OF FRISCO, TEXAS (CITY)

AND
DAVID ALLEN CLARK (ARTIST)
ALAN DC
FOR

THE FABRICATION AND INSTALLATION OF THE PROPOSED
"FRISCO FIRST"
(PRESTON ROAD, PHASE 2 PROJECT) (PROJECT)

Made as of the 17th day of February in the year Two Thousand Nine:

BETWEEN the City: **The City of Frisco, Texas**
6101 Frisco Square Boulevard
Frisco, Texas 75034
Telephone: (972) 292-5400
Facsimile: (972) 731-4945

and the Artist: *ALAN DC*
David Allen Clark
753 South Second Street
Lander, WY 82520
Telephone: (307) 332-0176
Facsimile: (307) 322-9413

for the following Project: Fabrication and Installation of the proposed "Frisco First" for Preston Road, Phase 2

The City and Artist agree as set forth below:

THIS AMENDMENT NUMBER ONE is made and entered by and between the City of Frisco, Texas, a Home-Rule Municipal Corporation, hereinafter referred to as "City," and David ~~Allen~~ Clark hereinafter referred to as "Artist," to be effective from and after the date as provided herein the "Amendment Number One."

ALAN DC
WHEREAS, the City and Artist entered into that certain Agreement for professional artist services to fabricate and install the proposed "Frisco First" submitted for the Preston Road, Phase 2 public art competition in May, 2005, hereinafter referred to as "Project," and

WHEREAS, the City and Artist desire to amend the Agreement for the purpose of adjusting the Scope of Services (defined in the Agreement) to require the Artist to install

"Frisco First" temporarily at the George A. Purefoy Municipal Complex and to amend Exhibit "A" Project Description and Exhibit "B" Completion Schedule; and

WHEREAS, the City and Artist desire to amend the Agreement as hereinafter set forth.

NOW, THEREFORE, KNOW ALL PERSONS BY THESE PRESENTS:

That for and in consideration of the covenants contained herein, the mutual benefits to be obtained hereby and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Artist do mutually agree as follows:

1. **Installation.** City and Artist agree that this Amendment Number One amends the Agreement for the purpose of changing the location of installation to be performed by Artist, as more particularly described in the following exhibits, attached hereto and incorporated herein for all purposes:
 - a. Exhibit "A," Scope of Amended Services, dated January 23, 2008.
 - b. Exhibit "B," Amended Completion Schedule/Project Billing/Project Budget, dated January 23, 2008.
2. **Complete Agreement.** This Amendment Number One, including the exhibits attached hereto labeled "A" through "B," both of which are incorporated herein for all purposes, constitutes the entire Agreement by and between the parties regarding the subject matter hereof and supersedes all prior and/or contemporaneous written and/or oral understandings. This Amendment Number One may not be amended, supplemented, and/or modified except by written agreement duly executed by both parties. Exhibits "A-B" are attached hereto and made a part of the Agreement and this Amendment Number One.
3. **Counterparts.** This Amendment Number One may be executed in a number of identical counterparts. If so executed, each of such counterparts is to be deemed an original for all purposes, and all such counterparts shall, collectively, constitute one Amendment Number One. A facsimile signature will also be deemed to constitute an original if properly executed.
4. **Controlling Agreement.** To the extent any provision contained herein conflicts with the Agreement, the provisions contained herein shall supersede such conflicting provisions contained in the Agreement.

5. **Defined Terms / Ratification of Agreement.** Any term not defined herein shall be deemed to have the meaning ascribed to it under the Agreement. Except as expressly amended hereby, all of the terms, provisions, covenants and conditions of the Agreement are hereby ratified and confirmed and shall continue in full force and effect.
6. **Authority to Execute.** The individuals executing this Amendment Number One represent and warrant that they are empowered and duly authorized to so execute this Amendment Number One on behalf of the parties they represent.
7. **Entire Agreement / Amendment Number One.** This Amendment Number One, and the Agreement embody the entire agreement by and between the parties regarding the subject matter hereof. There are no oral understandings or arrangements between the parties regarding the subject matter hereof.
8. **Venue.** The Agreement and Amendment Number One shall be governed by and construed in accordance with the laws of the State of Texas and shall be performable in Collin County, Texas.
9. **Assignment.** This Amendment Number One may not be assigned except as authorized in the Agreement.

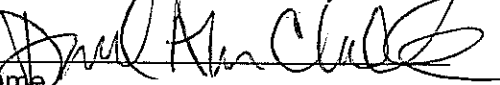
IN WITNESS HEREOF, the parties have executed this Amendment Number One to the Agreement, and caused this Amendment Number One to be effective on the latest day as reflected by the signatures below.

CITY

The City of Frisco, Texas

By: _____
George Purefoy
Title: City Manager

ARTIST

DAVID ALAN CLARK
By: 
Name
Title: OWNER

APPROVED AS TO FORM:

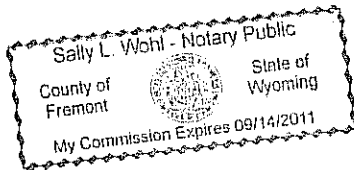
Abernathy, Roeder, Boyd and Joplin, P.C.

STATE OF TEXAS:

COUNTY OF COLLIN:

BEFORE ME, THE UNDERSIGNED AUTHORITY, A NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS, ON THIS DAY PERSONALLY APPEARED **GEORGE PUREFOY**, KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSE AND CONSIDERATION EXPRESSED, AND IN THE CAPACITY THEREIN STATED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS 17th DAY OF February, 2009.



Sally L. Wohl
NOTARY PUBLIC IN AND FOR THE STATE OF ~~TEXAS~~ Wyoming
My commission expires: 09-14-2011

STATE OF WYOMING:

COUNTY OF Fremont:

BEFORE ME, THE UNDERSIGNED AUTHORITY, A NOTARY PUBLIC IN AND FOR THE STATE OF WYOMING, ON THIS DAY PERSONALLY APPEARED _____, KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSE AND CONSIDERATION EXPRESSED, AND IN THE CAPACITY THEREIN STATED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS ____ DAY OF _____, 2009.

NOTARY PUBLIC IN AND FOR THE STATE OF ~~TEXAS~~ Wyoming
My commission expires: _____

**Amendment Number One to Agreement by and between
the City of Frisco, Texas (City) and David Allen Clark
for the fabrication and temporary installation at the George A. Purefoy Municipal
Center of the proposed "Frisco First" for
the (Preston Road, Phase 2 Project) (Project)**

Project Description

"...Frisco's First" is a life-sized (6' tall) figure holding onto the front portion of a train engine, roughly 12' from the ground to the top of the stack. A jubilant farmer rides the first railroad train engine into town, waving his hat, knowing that prosperous days are ahead. The front of the engine is historically accurate, based on a photo by Mattie McCormack of the approach of the town's first train on March 20, 1902. The backside of the engine will consist of an extended metal backing.

The sculpture will be cast bronze, with a welded steel armature. The armature will extend down into the concrete base to securely anchor the sculpture. The surface of the bronze farmer will be treated with an understated light to medium brown heat-set patina, resistant to salt and moisture. The train will be made of 1/16th and 1/4" steel and have a black color. The entire sculpture will be mounted to a concrete slab 4" below sub-grade. The slab will then be covered with decomposed granite.

To fabricate and temporarily install the proposed "Frisco's First" for the Preston Road, Phase 2 project, artist David Alan Clark will perform the following tasks:

A) Following a site visit, submit final schematic drawings of the proposal, based upon submitted maquette, to City staff and the Public Art Board for review and approval within 60 days of the receipt of this agreement. These drawings will include:

- Detailed information of every physical feature of the construction of the Artwork and its integration with the site, with any proposed changes to the previously submitted maquette highlighted. (Final Design).
- A description of any issues involved in the construction, integration and maintenance of the Artwork, as well as any third party subcontractors needed to work on the project.
- A final project budget breakdown not to exceed \$100,000.00.
- An installation timeline.

B) Following formal approval of the Public Art Board, the Artist shall submit drawings stamped by an engineer, licensed by the State of Texas and paid for by the Artist, for certification that the Artwork, foundation, and its connection will be structurally sound.

C) The Artist shall fabricate and temporarily install the Artwork in substantial conformity with the approved design. Any significant changes in the concept, as defined in Article 5.2, must be approved by the City. It is the responsibility of the Artist to coordinate with the City, the Project Landscape Architect, and Contractor to ensure that the temporary site is prepared to receive the Artwork. The City will be responsible for preparation of the temporary site, including temporary installation of the foundation.

D) Upon completion of the temporary installation and clean-up of the temporary site, the City project manager will inspect the work and give notice of acceptance, as provided in this Agreement. The Artist will complete the City's maintenance worksheet and submit it to the City within ten (10) days of City's final acceptance of the Artwork."

**Amendment Number One to Agreement by and between
the City of Frisco, Texas (City) and David Allen Clark
to fabricate and temporarily install at the George A. Purefoy Municipal Center the
proposed "Frisco First" submitted for the
(Preston Road, Phase 2 Project)(Project)**

COMPENSATION SCHEDULE / PROJECT BILLING SUMMARY.

Completion Schedule and Project Billing

Task	Timeline	Frisco	Artist	Train Fabricator	Foundry
	January 2008	Contract signed	<ul style="list-style-type: none"> - Finalize research on train specs, farmer's clothing, haircut, boots, etc. - Insurance documentation provided. 		
Task 1 Insurance Received, artist preparing drawings for steel fabrication; down payment for train fabricators materials	February 2008	Check #1 - \$30,458.33 due	<ul style="list-style-type: none"> - Provide specs and down payment to train fabricator. - Begin creation of small clay maquette. - Schedule project with foundry. - Begin work with Texas engineer on engineering schematics. 	Begin work on life-sized steel train. (Will take 6 months)	
			- Continue work on small maquette.	...continues	

Task 2 Public Art Board approval of maquette and site visit. Stamped engineered drawings submitted.	July 2008	Meet w/artist, view maquette and approve or make changes. Check #2 - \$30,458.33 due	- Maquette complete, travel to Frisco for approval, site visit. - Final engineering drawings submitted. - First payment to foundry (for enlargement) - Artist re-carves foam enlargement, coats in clay and re-sculpts life-sized figure.	...continues	- Enlargement of small maquette to monument size begins: - small maquette is moulded, - re-created in wax, - scanned by computer and rough-milled in foam.
			Continues work on large figure.	...continues	
			Continues work on large figure.	...continues	
Task 3 Completion of large maquette	January 2009	Approve photos of large figure, train. (End of month) Check #3 \$30,458.34 due.	- Large figure complete. - (End of month) Large clay figure and train fitted together at foundry. - Second payment due to foundry (for 2/3 of casting) - Provide final payment to train fabricator.	Train complete, brought to foundry (end of month).	Approved figure is moulded, recreated in wax, coated in ceramic, cast in bronze, reassembled, flaws removed in metal shop, patina applied, attached to train. (Process takes 3-4 months)
Task 4 Final acceptance by project manager, submit maintenance worksheets, dedication.	May 2009	Approve work. Check #4 \$16,125.00 due.	- Supervise casting process at foundry. - On approval of final bronze, final payment to foundry. - Supervise temporary installation in Frisco.		Bronze figure attached to train, delivered and temporarily installed in Frisco.
Total		\$107,500.00			